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SUBJECT: COURT OF APPEALS UPHOLDS "EFFECTIVE REPENTANCE"  
FOR PKK MEMBERS

¶1. (U) A panel of judges from the Turkish Court of Appeals ruled November 1 that PKK members who had otherwise committed no crime shall benefit from Article 221 of the Turkish penal code, which allows for "effective repentance." Under this article, persons who are members of a criminal gang may leave the organization and appeal to the court. If s/he does so and the court determines that s/he has committed no other criminal act, the court releases the defendant with no further punishment.

¶2. (U) The panel overturned a lower court ruling in Diyarbakir, in which the presiding judge claimed that -- as a terrorist organization -- the PKK is different than a criminal gang, and thus PKK members could not benefit from Article 221. The Court of Appeals panel ruled that criminal gangs also include terrorist organizations. The Appeals Court panel made a similar ruling in an almost identical case -- originating from the same court in Diyarbakir -- regarding another PKK defendant in March of this year.

¶3. (SBU) Under Turkish law, the lower court in Diyarbakir may refuse to implement the Court of Appeals panel's ruling. In that instance, the case would be heard by the full Court of Appeals. This court's ruling would be the final say on the matter. Sezgin Tanrikulu, President of the Diyarbakir Bar, told Consulate Adana Nov. 3 that the court there had yet to respond to either Appeals Court ruling, but was unlikely to seek to overturn it.

¶4. (SBU) Koksall Toptan, Chairman of the parliament's Justice Committee, told us Nov. 2 that he agrees with the Court of Appeals' decision, and that other courts in Turkey have been applying Article 221 in this manner. Press reports indicate that the ruling could serve as a precedent for the 164 PKK members who have surrendered to Turkish authorities so far in 2006. (We have no independent verification of these numbers.)

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